IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REV. No.36 of 2007
RAM LAXMAN BHAGAT
Versus
STATE OF BIHAR & ORS
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4. 14.8.2008. Heard the learned counsel for the petitioner as well as the opposite parties.

This revision has been filed for setting aside the order dated 18th September,2006 passed by Ist Additional Sessions Judge, Samastipur in Cr. Revision No.724 of 2003 thereby the learned Additional Sessions Judge has set aside the order dated 17.10.2003 passed by S.D.M., Samastipur in M.R. Case No.780 of 2003.

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The submission of the learned counsel for the petitioner is that paragraph-6 of the impugned order would go to show that the court below has not properly appreciated the order passed by the S.D.M. Actually, the lower court had passed initial order for initiation of the proceeding under section 147 Cr.P.C. but the learned Additional Sessions Judge considered it as final order and set aside on the ground of non-complainance of Sub Section (2) of section 147 Cr.P.C. It is further submitted that there is no illegality in the initiation order. The learned S.D.M. initiated the proceeding on the basis of report of the police.

The learned counsel for the opposite party supported the order and submitted that actually there was no basis before the S.D.M. to initiate proceeding under section 147 Cr.P.C. The alleged

obstruction is existing since long. Apart from it, even after initiation of the proceeding no overt act was reported to be taken place between the parties for use of Rasta.

Considered the submission of the learned counsel for the petitioner. Perused the impugned order. On perusal of paragraph-6 of the impugned order, it is quite clear that the court below has wrongly considered the initiation order as final order and set aside the same. There is no question of compliance of Sub Section (2) of Section 147 Cr.P.C. before filing of written statement by the parties.

Thus, having regard to the facts and circumstances, this revision is allowed and the impugned order is hereby set aside. The parties are directed to file their respective written statement before the learned S.D.M. in compliance of the order dated 17.10.2003. Thereafter, the learned S.D.M. shall proceed to make enquiry in accordance with section 147(2) Cr.P.C. and decide the matter finally within four months of receipt of this order.

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(Ghanshyam Prasad)

N.H./